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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,447	02/07/2002	Jill Katz	2353.001	2667

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MCHALE & SLAVIN
4440 PGA BLVD
SUITE 402
PALM BEACH GARDENS, FL 33410

EXAMINER

REICHLER, KARIN M

ART UNIT	PAPER NUMBER
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3761

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3

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

Office Action Summary	Application No. 10/072,447	Applicant(s) KATZ, JILL	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> . | 6) <input type="checkbox"/> Other: |

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1. The abstract of the disclosure is objected to because the abstract is too short, i.e. should be between 50 and 150 words in length. Correction is required. See MPEP § 608.01(b).
2. The drawings are objected to because in Figure 1, the lines or arrows from 13, 14 and 32 should be dashed to denote underlying structure. This also applies to the lines from 33 and 34 in Figure 2. In Figure 1, there are several undenoted lines. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the resilient fasteners as claimed in claims 4 and 8 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. Claims 1-9 are objected to because of the following informalities: in claim 1, line 3, "a" should be deleted. On line 5, "said"(2nd) should be deleted. On line 6, before "having", --each-- should be inserted. On line 10 and the last line, "a" should be --the--. On lines 14 and 16, "end" should be --ends--. On line 18, after "elements", --,respectively,-- should be inserted. In claims 2-8, line 1, "A" should be --The--. In claim 9, line 6, "a" should be --the--. In Claim 6, line 3, "narrow" should be deleted. Appropriate correction is required.

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al.

See Figures 1-2, preformed body, 1 and 2, and col. 4, lines 55-62(it is noted that the claim does not require monolithic formation just integral formation); free ends, adjacent 13a and 13b; fastener elements, 13a and 13b; impervious layer 4, pervious liner, 3, resilience in waistband portion, 12, resilience in fasteners, see col. 4, lines 40-47, i.e. elastic band portion forming part of fastener, lateral edge elastic material, 9 and 10.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Walker GB '263.

See Figures 2-3 and abstract.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Meisels '501.

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The Walker article of underwear includes all the structure of claims 3-8 except for the resilience in the waist, fastener elements and lateral edges. However, Walker does teach the desire to be employ quick release fasteners in articles of underwear, see page 2, first full paragraph, to enable application or removal. Furthermore, Meisels teaches articles of underwear with a quick release fastener with resilience in the waist, fastener elements and lateral edges, see Figures, element 14 and col. 2, lines 5-10 and Figure 4, for adjustability of fit. To employ resilience as taught by Meisels on the Walker article of underwear would be obvious to one of ordinary skill in the art in view of the recognition that such would allow adjustable fit of the garment to the wearer and the desire of such fit in any garment, i.e. more comfortable, fewer sizes needed to fit a greater number of dimensions of wearers.

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al in view of Meisels.

Applicant claims a method of applying the diaper of claim 1 to a standing person including the steps of inserting a leg in the preformed leg opening, adjusting the diaper so that the crotch panel engages the standing wearer between the legs, and wrapping the front and back panels about the torso, bringing the free ends of the panels into contact with each other and securing the fastener elements together, i.e. securing the diaper in place and forming the other leg opening. While it is clear from the Figures 1-2 and, e.g., col. 2, lines 33-54 of Yamamoto, that a leg is inserted through the preformed leg opening, the diaper or pad is adjusted so that the crotch panel engages between the legs and the front and back panels are wrapped to bring the free ends and

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thus the fastener elements together while forming another leg opening, it is not clear that such is done while the wearer is standing nor that the panels ends and fastener elements are manipulated during application rather than prior to. However, this diaper or incontinence device is for use with adults, see col.5, lines 36-38, to provide close contact, i.e. good fit, to prevent leakage and which is easy to handle during use, see Background of the Invention section. Furthermore it is well known that adults conveniently and easily put garments with preformed leg holes on while standing and by inserting a leg through the appropriate preformed opening, pulling the garment up until the crotch portion of the garment is properly positioned, and, if a securement means is present, fastening the securement means. See, e.g., Meisels. Meisels also teaches securing fastening elements of an elasticized absorbent garment during application rather than prior thereto to provide for easier donning without tearing of the garment. Therefore, to apply the Yamamoto device as claimed, i.e while standing and securing the fastener elements during application, would be obvious to one of ordinary skill in the art in view of the recognition that such is the well known manner to apply preformed garments easily and without tearing of the garment and the desire of Yamamoto to provide a garment for adults which is easy to handle and provides good fit while preventing leakage. It is noted that if the garment would tear and/or not be properly positioned, good contact is not achieved with resultant leakage.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other device show other garments with fasteners.

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12. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday. The Official RightFAX number is 703-872-9302.

KMR

April 28, 2003

K. M. Reichle
KARIN REICHEL
PATENT EXAMINER